

112TH CONGRESS  
2D SESSION

**S.** 2094

To amend the Federal Water Pollution Control Act to update a program to provide assistance for the planning, design, and construction of treatment works to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows, and to require the Administrator of the Environmental Protection Agency to update certain guidance used to develop and determine the financial capability of communities to implement clean water infrastructure programs.

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IN THE SENATE OF THE UNITED STATES

\_\_\_\_\_ introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_

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**A BILL**

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1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Clean Water Afford-  
3 ability Act of 2012”.

4 **SEC. 2. SEWER OVERFLOW CONTROL GRANTS.**

5 Section 221 of the Federal Water Pollution Control  
6 Act (33 U.S.C. 1301) is amended—

7 (1) by striking subsections (a) through (g) and  
8 inserting the following:

9 “(a) GRANTS.—The Administrator may—

10 “(1) make grants to States for the purpose of  
11 providing grants to local or regional authorities or a  
12 municipality or municipal entity for use in planning,  
13 designing, and constructing treatment works to  
14 intercept, transport, control, or treat municipal com-  
15 bined sewer overflows and sanitary sewer overflows;  
16 and

17 “(2) make a grant directly to a local or regional  
18 authority or municipality or municipal entity for the  
19 purposes described in paragraph (1).

20 “(b) PRIORITIZATION.—In selecting from among mu-  
21 nicipalities applying for grants under this section, a State  
22 or the Administrator shall give priority to an applicant  
23 that is a financially distressed community, as determined  
24 by the applicable State under subsection (c).

25 “(c) DETERMINATION.—In determining whether a  
26 community is a distressed community for the purposes of

1 subsection (b), a State shall consider, among other factors,  
2 the criteria described in section 5(b)(2)(A) of the Clean  
3 Water Affordability Act.

4 “(d) COST-SHARING.—

5 “(1) FEDERAL SHARE.—The Federal share of  
6 the cost of any project or activity carried out using  
7 funds from a grant made under subsection (a) shall  
8 be not less than 75 percent.

9 “(2) NON-FEDERAL SHARE.—The non-Federal  
10 share of the cost of any project or activity carried  
11 out using funds from a grant made under subsection  
12 (a) may include—

13 “(A) in any amount, public and private  
14 funds and in-kind services; and

15 “(B) notwithstanding section 603, finan-  
16 cial assistance, including loans, from a State  
17 water pollution control revolving fund.

18 “(e) ADMINISTRATIVE REQUIREMENTS.—

19 “(1) IN GENERAL.—Subject to paragraph (2), a  
20 project that receives grant assistance under sub-  
21 section (a) shall be carried out subject to the same  
22 requirements as a project that receives assistance  
23 from a State water pollution control revolving fund  
24 established pursuant to title VI.

1           “(2) DETERMINATION OF GOVERNOR.—The re-  
2           quirement described in paragraph (1) shall not apply  
3           to a project that receives grant assistance under  
4           subsection (a) to the extent that the Governor of the  
5           State in which the project is located determines that  
6           a requirement described in title VI is inconsistent  
7           with the purposes of this section.

8           “(f) ALLOCATION OF FUNDS.—

9           “(1) FISCAL YEAR 2013.—For fiscal year 2013,  
10          subject to subsection (g), the Administrator shall use  
11          the amounts made available to carry out this section  
12          under subsection (i)(1) to provide grants to munici-  
13          palities and municipal entities under subsection  
14          (a)(2) in accordance with the priority criteria de-  
15          scribed in subsection (b).

16          “(2) FISCAL YEAR 2014 AND THEREAFTER.—  
17          For fiscal year 2014 and each fiscal year thereafter,  
18          subject to subsection (g), the Administrator shall use  
19          the amounts appropriated to carry out this section  
20          under subsection (i)(1) to provide grants to States  
21          under subsection (a)(1) in accordance with a for-  
22          mula that—

23                 “(A) shall be established by the Adminis-  
24                 trator, after providing notice and an oppor-  
25                 tunity for public comment; and

1                   “(B) allocates to each State a proportional  
2                   share of the amounts based on the total needs  
3                   of the State for municipal combined sewer over-  
4                   flow controls and sanitary sewer overflow con-  
5                   trols, as identified in the most recent survey—

6 “(i) conducted under section 210; and

7 “(ii) included in a report required  
8 under section 516(a).”;

(2) by redesignating subsections (h) and (i) as subsections (g) and (h), respectively;

(3) in the first sentence of subsection (h) (as redesignated by paragraph (2)), by striking “2003” and inserting “2013”; and

14 (4) by adding at the end the following:

15           “(i) FUNDING.—

16           “(1) AUTHORIZATION OF APPROPRIATIONS.—  
17       There are authorized to be appropriated to carry out  
18       this section—

19 “(A) \$250,000,000 for fiscal year 2013;

20 “(B) \$300,000,000 for fiscal year 2014;

21 “(C) \$350,000,000 for fiscal year 2015;

22 “(D) \$400,000,000 for fiscal year 2016;

23                      and

24 “(E) \$500,000,000 for fiscal year 2017.

1           “(2) AVAILABILITY OF AMOUNTS.—Amounts  
2           authorized to be appropriated under paragraph (1)  
3           shall remain available until expended.”.

4   **SEC. 3. INTEGRATED PERMITTING PROCESS.**

5           (a) IN GENERAL.—Section 402(a) of the Federal  
6   Water Pollution Control Act (33 U.S.C. 1342(a)) is  
7   amended by inserting after paragraph (5) the following:

8           “(6) INTEGRATED PERMITS.—

9                   “(A) DEFINITION OF PUBLICLY OWNED  
10           PERMITTEE.—In this paragraph, the term ‘pub-  
11           licly owned permittee’ means—

12                           “(i) a treatment works (as defined in  
13                           section 212) that is publicly owned; and

14                           “(ii) a municipal separate storm sewer  
15                           system referred to in this section.

16                   “(B) PLANNING APPROACH.—The Admin-  
17           istrator shall establish a comprehensive and in-  
18           tegrated planning approach to the obligations  
19           under this section of a publicly owned per-  
20           mittee—

21                           “(i) under which permit obligations  
22                           may be implemented according to a sched-  
23                           ule that—

1                   “(I) accounts for the financial ca-  
2                   pability of the publicly owned per-  
3                   mittee;

4                   “(II) prioritizes permit obliga-  
5                   tions according to the most cost-effec-  
6                   tive and environmentally beneficial  
7                   outcomes;

8                   “(III) accounts for the pre-  
9                   existing maintenance, operational, and  
10                  regulatory obligations of the publicly  
11                  owned permittee under this section;  
12                  and

13                  “(IV) enables the publicly owned  
14                  permittee to implement innovative ap-  
15                  proaches to meet those obligations;  
16                  and

17                  “(ii) that accounts for changed cir-  
18                  cumstances in the obligations of the pub-  
19                  licly owned permittee, such as—

20                         “(I) new innovative treatment  
21                         approaches;

22                         “(II) new regulatory require-  
23                         ments; and

24                         “(III) changes in financial capa-  
25                         bility.”.

1       (b) DURATION OF PERMITS.—Section 402(b)(1)(B)  
2 of the Federal Water Pollution Control Act (33 U.S.C.  
3 1342(b)(1)(B)) is amended by inserting before the semi-  
4 colon at the end the following: “, except that a permit with  
5 a term of more than 5 years but not more than 25 years  
6 may be approved if the permittee has an approved inte-  
7 grated plan established under subsection (a)(6)”.

8       **SEC. 4. COMBINED SEWAGE OVERFLOW LONG-TERM CON-**  
9                               **TROL PLAN.**

10       Section 402(q) of the Federal Water Pollution Con-  
11 trol Act (33 U.S.C. 1342(q)) is amended by adding at the  
12 end the following:

13               “(4) COMBINED SEWAGE OVERFLOW LONG  
14 TERM CONTROL PLAN.—

15               “(A) IN GENERAL.—The Administrator  
16 shall amend the CSO control policy to allow a  
17 publicly owned treatment work that has an ap-  
18 proved long-term control plan to modify the  
19 plan to incorporate green infrastructure and en-  
20 ergy-efficient technologies on a showing that  
21 the use of the technologies can cost-effectively  
22 help to meet the terms of the combined sewer  
23 overflow compliance obligations of the treat-  
24 ment work.

1                   “(B) COMPLIANCE.—The Administrator  
2                   shall allow for 30 years to meet compliance obli-  
3                   gations under long-term control plans modified  
4                   under this paragraph.”.

5 **SEC. 5. ENVIRONMENTAL PROTECTION AGENCY GREEN IN-**  
6 **FRASTRUCTURE PROMOTION.**

7           Title V of the Federal Water Pollution Control Act  
8 (33 U.S.C. 1361 et seq.) is amended—

9                   (1) by redesignating section 519 (33 U.S.C.  
10           1251 note) as section 520; and

11                   (2) by inserting after section 518 (33 U.S.C.  
12           1377) the following:

13 **“SEC. 519. ENVIRONMENTAL PROTECTION AGENCY GREEN**  
14 **INFRASTRUCTURE PROMOTION.**

15           “(a) IN GENERAL.—The Administrator shall ensure  
16 that the Office of Water, the Office of Enforcement and  
17 Compliance Assurance, the Office of Research and Devel-  
18 opment, and the Office of Policy of the Environmental  
19 Protection Agency promote the use of green infrastructure  
20 in and coordinate the integration of green infrastructure  
21 into permitting programs, planning efforts, research, tech-  
22 nical assistance, and funding guidance.

23           “(b) DUTIES.—The Administrator shall ensure that  
24 the Office of Water—

1           “(1) promotes the use of green infrastructure in  
2           the programs of the Environmental Protection Agen-  
3           cy; and

4           “(2) coordinates efforts to increase the use of  
5           green infrastructure with—

6                   “(A) other Federal departments and agen-  
7           cies;

8                   “(B) State, tribal, and local governments;  
9           and

10                   “(C) the private sector.

11           “(c) REGIONAL GREEN INFRASTRUCTURE PRO-  
12 MOTION.—The Administrator shall direct each regional of-  
13 fice of the Environmental Protection Agency, as appro-  
14 priate based on local factors, to promote and integrate the  
15 use of green infrastructure within the region that in-  
16 cludes—

17                   “(1) a plan for monitoring, financing, mapping,  
18           and designing the green infrastructure;

19                   “(2) outreach and training regarding green in-  
20           frastructure implementation for State, tribal, and  
21           local governments, tribal communities, and the pri-  
22           vate sector; and

23                   “(3) the incorporation of green infrastructure  
24           into permitting and other regulatory programs,  
25           codes, and ordinance development, including the re-

1       quirements under consent decrees and settlement  
2       agreements in enforcement actions.

3       “(d) GREEN INFRASTRUCTURE INFORMATION-SHAR-  
4       ING.—The Administrator shall promote green infrastruc-  
5       ture information-sharing, including through an Internet  
6       website, to share information with, and provide technical  
7       assistance to, State, tribal, and local governments, tribal  
8       communities, the private sector, and the public regarding  
9       green infrastructure approaches for—

10               “(1) reducing water pollution;

11               “(2) protecting water resources;

12               “(3) complying with regulatory requirements;

13       and

14               “(4) achieving other environmental, public  
15       health, and community goals.

16       “(e) GREEN INFRASTRUCTURE PORTFOLIO STAND-  
17       ARD.—The Administrator, in collaboration with State,  
18       tribal, and local water resource managers, shall establish  
19       voluntary measurable goals, to be known as the ‘green in-  
20       frastructure portfolio standard’, to increase the percentage  
21       of annual water managed by eligible entities that use  
22       green infrastructure.”.

1 **SEC. 6. WATER POLLUTION CONTROL REVOLVING LOAN**  
2 **FUNDS.**

3 (a) EXTENDED REPAYMENT PERIOD.—Section  
4 603(d)(1) of the Federal Water Pollution Control Act (33  
5 U.S.C. 1383(d)(1)) is amended—

6 (1) in subparagraph (A), by striking “20 years”  
7 and inserting “the lesser of 30 years or the design  
8 life of the project to be financed with the proceeds  
9 of the loan”; and

10 (2) in subparagraph (B), by striking “not later  
11 than 20 years after project completion” and insert-  
12 ing “upon the expiration of the term of the loan”.

13 **SEC. 7. UPDATING OF GUIDANCE.**

14 (a) DEFINITIONS.—In this section:

15 (1) ADMINISTRATOR.—The term “Adminis-  
16 trator” means the Administrator of the Environ-  
17 mental Protection Agency.

18 (2) AFFORDABILITY.—The term “affordability”  
19 means, with respect to payment of a utility bill, a  
20 measure of whether an individual customer or house-  
21 hold can pay the bill without undue hardship or un-  
22 reasonable sacrifice in the essential lifestyle or  
23 spending patterns of the individual or household, as  
24 determined by the Administrator.

25 (3) FINANCIAL CAPABILITY.—The term “finan-  
26 cial capability” means the financial capability of a

1 community to make investments necessary to make  
2 water quality-related improvements, taking into con-  
3 sideration the criteria described in subsection  
4 (b)(2)(A).

5 (4) GUIDANCE.—The term “guidance” means  
6 the guidance published by the Administrator entitled  
7 “Combined Sewer Overflows—Guidance for Finan-  
8 cial Capability Assessment and Schedule Develop-  
9 ment” and dated February 1997, as applicable to  
10 combined sewer overflows and sanitary sewer over-  
11 flows.

12 (b) UPDATING.—

13 (1) IN GENERAL.—Not later than 1 year after  
14 the date of enactment of this Act, the Administrator  
15 shall update the guidance to ensure that the evalua-  
16 tions by the Administrator of financial capability as-  
17 sessment and schedule development meet the criteria  
18 described in paragraph (2).

19 (2) CRITERIA.—The criteria described in this  
20 paragraph are that, under the updated guidance—

21 (A) in assessing financial capability of a  
22 community—

23 (i) greater emphasis should be placed  
24 on local economic conditions;

1 (ii) for regional systems, consideration  
2 should be given to the economic conditions  
3 of political jurisdictions and significant de-  
4 mographic groups within each region;

5 (iii) prescriptive formulas for use in  
6 calculating financial capability and thresh-  
7 olds for expenditure should not be consid-  
8 ered to be the only indicator of the finan-  
9 cial capability of a community;

10 (iv) site-specific local conditions  
11 should be taken into consideration in ana-  
12 lyzing financial capability;

13 (v) a single measure of financial capa-  
14 bility or affordability (such as median  
15 household income) should be viewed in the  
16 context of other economic measures, rather  
17 than as a threshold to be achieved; and

18 (vi)(I) consideration should be given  
19 to the economic outlook of a community,  
20 including the potential impact of program  
21 requirements over time, in the development  
22 of implementation schedules; and

23 (II) the assessment should take into  
24 consideration other essential community

1 investments relating to water quality im-  
2 provements;

3 (B) with respect to the timing of imple-  
4 mentation of water quality-related improve-  
5 ments—

6 (i) environmental improvement imple-  
7 mentation schedules should be structured  
8 to mitigate the potential adverse impact on  
9 distressed populations resulting from the  
10 costs of the improvements; and

11 (ii) implementation schedules should  
12 reflect local community financial conditions  
13 and economic impacts;

14 (C) with respect to implementation of  
15 methodologies—

16 (i) a determination of local financial  
17 capability may be achieved through an  
18 evaluation of an array of factors the rel-  
19 ative importance of which may vary across  
20 regions and localities; and

21 (ii) an appropriate methodology  
22 should give consideration to such various  
23 factors as are appropriate to recognize the  
24 prevailing and projected economic concerns  
25 in a community; and

1 (D) the residential indicator should be re-  
2 vised to include—

3 (i) a consideration of costs imposed  
4 upon ratepayers for essential utilities;

5 (ii) increased consideration and quan-  
6 tification of local community-imposed costs  
7 in regional systems;

8 (iii) a mechanism to assess impacts on  
9 communities with disparate economic con-  
10 ditions throughout the entire service area  
11 of a utility;

12 (iv) a consideration of the industrial  
13 and population trends of a community;

14 (v) recognition that—

15 (I) the median household income  
16 of a service area reflects a numerical  
17 median rather than the distribution of  
18 incomes within the service area; and

19 (II) more representative methods  
20 of determining affordability, such as  
21 shelter costs, essential utility pay-  
22 ments, and State and local tax efforts,  
23 should be considered;

24 (vi) a consideration of low-income  
25 ratepayer percentages; and

1 (vii) impacts relating to program de-  
2 livery, such as water quality infrastructure  
3 market saturation and program manage-  
4 ment.

5 (3) IMPLEMENTATION.—The updated guidance  
6 should indicate that, in a case in which a previously  
7 approved long-term control plan or associated en-  
8 forceable agreement allows for modification of the  
9 plan or terms of the agreement (including financial  
10 capability considerations), and all parties are in  
11 agreement that a change is needed or that the plan  
12 or agreement contains a reopener provision to ad-  
13 dress changes in the economic or financial status of  
14 the community since the effective date of the plan or  
15 agreement, reconsideration and modification of fi-  
16 nancial capability determinations and implementa-  
17 tion schedules based on the criteria described in  
18 paragraph (2) are appropriate.

19 (c) PUBLICATION AND SUBMISSION.—Upon comple-  
20 tion of the updating of guidance under subsection (b), the  
21 Administrator shall publish in the Federal Register and  
22 submit to the Committee on Environment and Public  
23 Works of the Senate and the Committee on Transpor-  
24 tation and Infrastructure of the House of Representatives  
25 the updated guidance.

1       (d) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated such sums as are nec-  
3 essary to carry out this section.